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7

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 898-A

11 GERALD PATTON BROMS
12 77 Wales Street
Thousand Oaks, CA 91360
13 Land Surveyor License No. L 2836
Civil Engineer License No. C 34382
14

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
20 Department of Consumer Affairs.

21 2. On or about February 23, 1955, the Board for Professional Engineers and Land
22 Surveyors issued Land Surveyor License Number L 2836 to Gerald Patton Brooms (Respondent).
23 The Land Surveyor License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on September 30, 2010, unless renewed.

25 3. On or about August 18, 1982, the Board for Professional Engineers and Land
26 Surveyors issued Civil Engineer License Number C 34382 to Gerald Patton Brooms (Respondent).
27 The Civil Engineer License was in full force and effect at all times relevant to the charges brought
28 herein and will expire on September 30, 2011, unless renewed.

1 **JURISDICTION**

2 4. This Accusation is brought before the Board for Professional Engineers and Land
3 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
4 All section references are to the Business and Professions Code unless otherwise indicated.

5 **STATUTORY PROVISIONS**

6 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
7 cancellation shall not deprive the Board of jurisdiction to proceed with a disciplinary action
8 during the period within which the license may be renewed, restored, reissued or reinstated.

9 6. Section 8761, subdivision (b), states that:

10 "All maps, plats, reports, descriptions, or other land surveying documents shall be prepared
11 by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to
12 practice land surveying and shall include his or her name and license number."

13 7. Section 8780 of the Code states:

14 "The board may receive and investigate complaints against licensed land surveyors and
15 registered civil engineers, and make findings thereon.

16 "By a majority vote, the board may reprove, suspend for a period not to exceed two years,
17 or revoke the license or certificate of any licensed land surveyor or registered civil engineer,
18 respectively, licensed under this chapter or registered under the provisions of Chapter 7
19 (commencing with Section 6700), whom it finds to be guilty of:

20 ...

21 "(b) Any negligence or incompetence in his or her practice of land surveying.

22 ...

23 "(f) Aiding or abetting any person in the violation of any provision of this chapter.

24 ...

25 "(h) A violation in the course of the practice of land surveying of a rule or regulation of
26 unprofessional conduct adopted by the board."

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REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 404.2, subdivision (a), states:

“(a) The term "responsible charge" directly relates to the extent of control a licensed land surveyor or civil engineer legally authorized to practice land surveying (hereinafter referred to as "legally authorized civil engineer") is required to maintain while exercising independent control and direction of land surveying work or services and the land surveying decisions which can be made only by a licensed land surveyor or legally authorized civil engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the land surveyor or legally authorized civil engineer:

(A) Makes or review and approves the land surveying decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the land surveying decisions, determines the applicability of survey criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Land Surveying Decisions. The term "responsible charge" relates to land surveying decisions within the purview of the Professional Land Surveyors' Act.

Land surveying decisions which must be made by and are the responsibility of the land surveyor or legally authorized civil engineer in responsible charge are those decisions concerning permanent or temporary work which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

(A) Selecting the methods, procedures, and tolerances of field work.

(B) Determining calculation and adjustment methods.

(C) Determining and specifying the information to be shown on maps or documents furnished in connection with land surveying services, including the format of the information and the format of the maps or documents.

(D) The decisions related to the preparation of maps, plats, land surveying reports, descriptions, and other land surveying documents furnished in connection with the land surveying services.

1 (E) Reviewing the sufficiency and accuracy of the work product.

2 (3) Reviewing and Approving Land Surveying Decisions. In making or reviewing and
3 approving land surveying decisions, the land surveyor or legally authorized civil engineer shall be
4 physically present or shall review and approve through the use of communication devices the land
5 surveying decisions prior to their implementation.

6 **COST RECOVERY**

7 9. Section 125.3 of the Code provides, in pertinent part, that the board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 **BOARD COMPLAINT AND INVESTIGATION NO. 2003-12-344**

12 10. On December 5, 2003, the Board received a complaint from Stephen D. Schuett,
13 Assistant County Counsel, County of Kern, California ("complainant"). This complaint, the
14 related investigation, and eventual investigative report, were assigned No. 2003-12-344 by the
15 Board. The complainant alleged that on or about July 23, 2002, Kern County ("County") entered
16 into a contract with Sukut Construction Inc. ("Sukut") to provide final closure construction at
17 County's Kern Valley Sanitary Landfill. The contract required Sukut to hire a licensed land
18 surveyor or qualified registered civil engineer to provide the survey work to confirm that site
19 conditions were representative of information contained in the County's blue line construction
20 drawings. Sukut hired BLC Surveying, Inc. ("BLC"), Respondent's company.

21 11. BLC began work on or about August 19, 2002. Between on or about August 27,
22 2002 and on or about February 3, 2003, the County requested the survey data from Respondent
23 and/or from Sukut approximately 18 times.

24 12. On or about October 9, 2003, a letter and pre-construction survey data, on BLC
25 letterhead, signed and stamped by Respondent, was received by the County.

26 13. Complainant alleged the survey was either never actually performed, or was not
27 performed to industry standards, based on Respondent's lack of timeliness in providing the pre-
28 construction survey data; Respondent's lack of adequate taking of photographs of the property

1 (only 151 shots were taken for a survey of 80 acres); and the date on which the survey allegedly
2 took place (August 10, 2002) was a week after excavation at the borrow site had already begun.

3 14. A dispute between Sukut and the County regarding the instant project resulted in a
4 lawsuit¹. As part of the lawsuit, County Counsel took depositions from the following persons
5 from BLC: Respondent, Michael Anderson, James Meyers, and Robert Reljin.

6 15. On or about May 8, 2006, Board Enforcement Analyst Jacqueline Jenkins transmitted
7 this case to independent technical expert Robin B. Hamers, Registered Civil Engineer ("Mr.
8 Hamers") for his expert opinion. Mr. Hamers opined that: (1) Respondent's negligence in not
9 acting in responsible charge on this project led to substantial problems on the project; (2)
10 Respondent's negligence was so widespread that it reflects incompetence in understanding his
11 professional responsibilities; and (3) because Respondent plays no active role in managing or
12 running the business other than occasionally fielding telephone calls and signing and sealing
13 plans when requested by the office, he aided and abetted two unlicensed land surveyors, James
14 Meyers and James Broms, in the unlicensed practice of land surveying.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Negligence and/or Incompetence in the Practice of Land Surveying)

17 16. Respondent is subject to disciplinary action under section 8780, subdivision (b), for
18 committing acts that amounted to negligence and/or incompetence in the practice of land
19 surveying in that Respondent failed to act in responsible charge of BLC, signed and stamped
20 documents based on phone calls, allowed unlicensed land surveyors to determine scopes of work,
21 prepare written contracts, perform work, and represent themselves as professionals. Complainant
22 references and incorporates all the allegations contained in paragraphs 10 through 15, as though
23 set forth fully herein.

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27 ¹ *Sukut Construction, Inc. v. County of Kern*, Kern County Superior Court, Metropolitan
28 Division District, Case No. S-1500-CV-256201 SPC.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (Aiding and Abetting the Unlicensed Practice of Another)

3 17. Respondent is subject to disciplinary action under section 8780, subdivision (f), for
4 aiding and abetting James Meyers and James Broms in the unlicensed practice of professional
5 land surveying. Complainant references and incorporates all the allegations contained in
6 paragraphs 10 through 16, as though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
10 decision:

- 11 1. Revoking or suspending Land Surveyor License Number L 2836, issued to Gerald
12 Patton Broms;
13 2. Revoking or suspending Civil Engineer License Number C 34382, issued to Gerald
14 Patton Broms;
15 3. Ordering Gerald Patton Broms to pay the Board for Professional Engineers and Land
16 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3;
18 4. Taking such other and further action as deemed necessary and proper.

19
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21 DATED: April 1 2010

Original Signed

22 DAVID E. BROWN
23 Executive Officer
24 Board for Professional Engineers and Land Surveyors
25 Department of Consumer Affairs
26 State of California
27 Complainant

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